

**New Source Review Retooling Advisory Group
Meeting #2, September 17, 2003, Madison, WI**

Advisory Group Participants: Renee L. Bashel, Dept. of Commerce; Myron Hafele, Kohler Co.; Hank Handzel, DeWitt, Ross & Stevens, representing Printing Industries of Wisconsin; Howard Hofmeister, Bemis Co.; Rick Osa, STS Consultants; Michele Pluta, Alliant Energy; Annabeth Reitter, Stora Enso; Jeff Schoepke, Wisconsin Manufacturers & Commerce; Thomas T. Stocksdale, S.C. Johnson; Mark Thimke, Foley & Lardner; Paul White (for Jon Konings), We Energies; Jeff Burger, DNR Southeast Region; Lloyd Eagan and Jeff Hanson, DNR Bureau of Air Management; Dave Hildreth and Imelda Stamm, DNR Northeast Region.

Others: Todd Palmer, DeWitt Ross & Stevens; Jason Martin, Short Elliott Hendrickson; Gary Van Helvoirt and Cindy Brandt, Wisconsin Public Service Corp.; Jeff Zipp, Legislative Audit Bureau; Elizabeth Kluesner, DNR Executive Assistant; Marcia Penner, DNR Legal Services; Lois Aide & Mark McDermid, DNR Cooperative Environmental Assistance; Greg Swanson, DNR Communications & Education; Caroline Garber and Anne Urbanski (notetaker), DNR Bureau of Air Management; Darin Harris, DNR Management & Budget (facilitator).

Handouts/Overheads: Available at <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/sep172003/>

Next meeting: October 2, 2003, from 9:00 a.m. to 1:00 p.m. in Room 041, GEF 3, 125 S. Webster St., Madison, 125 S. Webster Street, Madison.

Discussion

Introductions, announcements, etc.: Darin Harris asked the group to be in listening mode. He handed out a diagram called “the ladder of inference,” a tool a person can use if s/he feels self in conflict, especially with what others are saying. He asked everyone to tend to add his or her own meanings, assumptions, and beliefs and then take some action. If in conflict, try to “walk down the ladder.” Use inquiry questions to find out what’s going on. Today’s desired outcome is understanding --hearing how DNR translated rule, what gaps they think exist, and how they are seeking your advice. Lloyd Eagan announced that Jay Hochmuth has been reassigned to South Central Region, while Al Shea will be the new Division of Air & Waste administrator. However, those changes should not affect this group because Elizabeth Kluesner is still this group’s executive sponsor.

1,000 tons description: *Outcome – information to understand why DNR believes air pollution would increase by 1,000 tons if the Department permitted facilities using EPA’s new NSR rule.* Jeff Hanson put the federal rule language into the state rule. DNR analyzed federal rule changes last winter. We were charged for today to put together a methodology of the process we used to arrive at the conclusions we came to in February 2003. DNR’s approach:

- Examined NSR major and synthetic minor permits issued in 2002 – total of 24 permits out of 235 issued – limited review to permits with emission limits to avoid Prevention of Significant Deterioration (PSD).
- Compared project descriptions with components of federal NSR rule changes. Really boiled down to changes we’re dealing with today.
- Examined control requirements of permit based on BACT/LAER analysis with next most stringent regulatory requirements (NSPS, MACT, RACT etc.). Some projects that took PSD might not have done so if the new provisions had been available e.g. PALs. Included those in analysis. What would emissions cap be absent the PALs limit?
- Types of sources reviewed – printing facilities, paper mills power plants, generators, foundries, and boilers. Programs providing exemptions – applicability test, PALs, clean units, Pollution

control projects (PCPs), and de-bottlenecking. Crux was that if federal change was made to debottlenecking the project could have avoided PSD.

Example 1 – a printing facility. BACT control = 97.5% overall. RACT control = 90% (construction), 65% (overall). Had a PAL been in place, there would have been 78 more tons emitted. E.g. today it's a 300-ton source, 7 years ago it was a 400-ton source. Potential to emit under BACT was 78 tons (new unit). Specifically the BACT requirement was 97.5% control. RACT was 65% capture and control. Difference between BACT control and RACT control (which would be allowed under PAL) is 78 tons. If the facility had had a PAL, it would have been allowed to emit 78 tons more than under its current permit which requires BACT. The 78-ton difference reflects potential actual emissions. Comments: Palmer said this analysis doesn't take into account the long-term environmental benefits of PALs. Osa said it also doesn't look at the effects of Clean Unit exemptions.

Example 2 – a paper machine change at Stora Enso. This company netted and took reductions at the particular machine. DNR used the applicability test; assumed potential emissions, looked at emissions cap with 85% control vs. 85% control with no cap. Result was an extra 330 tons of VOCs. Because this source's baseline actual emissions were high, it would have been excluded under the applicability test and would not have had to net under the new rules.

Example 3 - Power plant, burner change, applicability test, BACT vs. New Source Performance Standards; the facility went through a BACT analysis and put in low-NOx burners. DNR compared BACT rate to current NSPS. With burner and fuel change, low-NOx emission rate is 9 ppm. Using the NSPS emission rate this facility would have had a 771-ton increase in NOx emissions. This source was a combustion turbine at a utility, so DNR assumed a basic usage pattern and compared past actual emissions to projected actual emissions. Installation of low-NOx burners (BACT) resulted in a 771-ton reduction compared to NSPS.

Example 4 – A papermaking machine that triggered PSD due to debottlenecking issues (downstream emission changes that were significant). What the facility said they would do would have excluded this project from PSD. The permit required no controls. End result was no change in emissions. This is one of our “paperwork exercise” permits, the type DNR will get rid of with NSR reform.

In 2002 DNR issued about 235 permits, of which 24 would have triggered BACT analysis. Eight of the 24 (one-third) would not have been reviewed under NSR reform.

Several advisory group members said that companies in their industries would try to use the best technology they could get (usually BACT) rather than trying to save a marginal amount of money for significantly less pollution control. Eagan agreed that a number of companies would try to do right thing, but those that won't end up in her office arguing about a BACT or LAER determination. So from her perspective it's hard to count on everyone's good will to be a good actor. DNR is concerned the bad actors will have greater license to hurt the environment. Hanson noted that in all of the analyses DNR performed, the existing NSR rule led to lower emissions than the new NSR rule. The scope of DNR's analysis was to determine the impacts of these particular changes. DNR didn't look at PSD permits that couldn't take advantage of these exclusions. DNR did look at what the net reduction would have been, usually where no controls were required. BACT was what they were already doing. Hanson said the state's total emission inventory last year was in the vicinity of 5 hundred thousand tons.

DNR technological support for the NSR retooling: Harris announced that DNR plans to set up a list serv or public email distribution list for this group to have access to all the public documents related to the effort. DNR is also trying to create an “extranet” website on which the advisory group members can add their comments to an online version of the marked-up chapter NR 405 (see

following discussion). We hope to have the extranet running by the end of September. We will also have an intranet site for DNR staff to do work.

Changes to NSR Rule: *Outcome – understand how DNR fits new federal rule into existing WI rule and outline of which areas DNR considers more work needs to be done.*

Hanson presented overheads on “Challenges within federal NSR rule changes” (available online at <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/sep172003/NSRrulechallenges.pdf>). The main topics of EPA’s 12/31/2002 rulemaking were PALS, clean units, PCPs and applicability test. Federal rule language for PSD SIP can be found mostly in 40 CFR 51.166. Materials for discussion merge that with NR 405 (WI PSD SIP program). Basically tried to put federal language in where it would fit in NR 405. Much of the language in the merged document is still federal – will convert to state language as we go through rule making process. Added language is in underline font. Deleted language is in strikethrough font. Federal rule citations are in [] so we can go back to exact federal language. Here are the group’s bottom-line issues (boiled down from minutes of previous meetings): *Need to include primary federal rule components; administrative flexibility, certainty, consistency, clarity, protective of air quality.* Portions of the regulation may be unclear or require more detail. Portions of regulation may present challenges with meeting bottom line issues. Shaded areas in markup show Hanson’s point of view re: challenging issues. Primary rule sections affected are: Definitions (405.02), Source obligation (405.16). Additions – clean units (405.18 and 405.19), PCPs (405.20), PALs (405.21). Harris noted that every member of the advisory group would have a chance to discuss and comment on these issues on the planned extranet site. Mark Thimke suggested DNR had changed the rules of the game; industry had expected to see DNR’s position on the federal rule today. Lloyd Eagan said that DNR did not have a position on the rule; the department wants input on alternatives that can be used to address the contentious issues. Renee Lesjak Bashel said that the proposed process would appeal to the Small Business Environmental Council, whose members often feel they’re brought into the rule-making process after DNR has staked a claim. Thimke said industry still doesn’t know which alternatives DNR prefers to the disputed sections of federal rule language. Hanson said the only areas DNR is concerned about are those that have yellow highlighting over the text; perhaps some committee members; if members don’t agree with what’s been highlighted, please let DNR know. DNR is willing to adopt areas of text that have not been highlighted in yellow.

Schoepke praised the NR 445 Toxics Advisory Group process, which was good (from WMC’s point of view) because DNR staff presented a department proposal on a specific issue or issues at each meeting. Industry would like to see a similar process for the NSR retooling. It’s time consuming but industry prefers to see DNR’s position on specific items so they can have something to react to. Kluesner said Secretary Hassett has some concerns about both the clarity and the substance of EPA’s rule revision, while Gov. Doyle and Attorney General Lautenschlager are on record as disagreeing with some of the substantive issues. Annabeth Reiter suggested using the highlighted areas of concern as the starting points for discussion. She asked that DNR draft straw language related to those areas. Harris said people should not only give feedback about the highlighted areas, they should also, if possible, suggest specific language to fix those areas. Thimke suggested delaying discussing about areas that are strictly “clarity problems” until the group sees the “menu of options” that STAPPA/ALAPCO is developing.

Using marked-up areas that DNR considers “challenges in the rule”, the group then worked out a timeline of which issues they consider most significant and at which meetings to tackle those issues. Categories and substantive issues include:

Pollution Control Projects:

1. Notice-and-go provisions for pollution control projects (PCPs)
2. Emissions credits and length of designation for Environmentally Beneficial projects

Clean Units:

3. Clean Units, including length of designation
4. Netting reductions and emission reduction credits
5. How redesignation of an attainment area to nonattainment (or nonattainment to attainment) would affect Clean Units
6. Retroactive/past determinations of Clean Units

PALs – involves complex implementation issues:

7. Emission baseline - length of time for setting baseline
8. Addition of new units
9. Length of a PAL - amount of time
10. Relaxation of past avoidance limits – air quality, integrity
11. PAL renewal and expiration - timing, time frame
12. Ambient air quality effects of PAL – interfaces with minor source review

Applicability Test

13. Representative time period, including lookback
14. Start-up shut-down malfunction emissions – technical numbers and whether to include at all
15. Different baselines for different pollutants – clarity, consistency and potential air quality impacts (cherry-picking)
16. New units – clarity, consistency

Projected Actual Emissions

17. Projection period – length of time, clarity
18. Start-up shut-down – whether or not to include

Parking Lot: Other issues that need to be addressed at some later time:

- “Reasonable possibility” – implementation
- Monitoring for projection – implementation and clarity
- What is a project? – need a clearer definition; change definition to be more usable.
- How this rule impacts other rules e.g. NR 406.

Next steps: *Plan for submitting member reviews of Wisconsin version of federal rule*

- By 9/24, members should send comments to Jeff Hanson on the marked-up rule draft. Please provide alternative language or ideas for addressing your concerns. Use a highlighting color other than yellow to comment about shaded areas and any other language of concern.
- At 10/2 meeting (or before) DNR will have a master re-draft of the rule, including all the comments, plus comments on items 13-16 above.

Calendar for Addressing Selected Issues: The group decided to address specific issues at upcoming meetings, as follows:

- October 2 – Issues 13, 14, 15, 16, 17 and 18
- October 8 – Issues 9, 10 and 11 (possibly 7 and 8 as well)
- October 15 – Issues 3, 4, 5 and 6
- October 23 – Issues 1 and 2 and clarity
- October 29 – Sweep up anything left over
- November 5 – Sweep up